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BANK OF AMERICA, N.A.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ALEXIS GURSHIN, an individual,

CASE NO. 2:15-cv-00323-GMN-VCF

Plaintiff.

**STIPULATION FOR A PROTECTIVE
ORDER**

vs.

BANK OF AMERICA, NATIONAL
ASSOCIATION; DOES 1 through X, and
ROE BUSINESS ENTITIES I through X,
inclusive,

Complaint Filed: 10/28/2014
Complaint Served: 2/4/2015
Removal Date: 2/24/2015

Defendants.

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1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, and/or private information for which special protection from public
4 disclosure and from use for any purpose other than as necessary for purposes of prosecuting or
5 defending this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition
6 the court to enter an Order for protective designations. The parties acknowledge that the resulting
7 Order does not confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords from public disclosure and use extends only to the limited information or items
9 that might be entitled to confidential treatment in discovery under applicable legal principles. The
10 parties further acknowledge that this Stipulated Protective Order does not entitle them to file
11 confidential information under seal, and that they must follow all Local Court Rules and other
12 applicable rules when seeking permission from the court to file materials under seal. The parties
13 acknowledge that this protective order does not entitle them to file confidential information under
14 seal without first complying with the standards articulated in *Kamakana v. City and County of*
15 *Honolulu*, 447 F.3d 1172 (9th Cir. 2006) and Local Rule 10-5.

16 **2. DEFINITIONS**

17 **2.1 Challenging Party:** a Party or Non-Party that challenges the designation of
18 information or items under this Order.

19 **2.2 “CONFIDENTIAL” Information or Items:** “CONFIDENTIAL,” as the term is
20 used in this protective order, shall pertain to information and documents that fall within one or more
21 of the following categories: (a) information prohibited from public disclosure by statute; (b) medical
22 records, personnel records, or other information of a personal nature, in which an individual person
23 has a legitimate expectation of privacy; (c) financial and/or banking account records; (d) trade
24 secrets, or similarly sensitive research, development, financial, or commercial information which is
25 maintained as such (non-public) and where disclosure would unfairly commercially damage a
26 party’s business if disclosed to a competitor; (d) portions of depositions (audio or video) where
27 CONFIDENTIAL material is discussed, disclosed or used as exhibits. The parties reserve the right
28 to meet and confer over additional categories that may be deemed confidential as discovery

1 continues. Documents (including electronically stored information) designated as
2 "CONFIDENTIAL" under this Order, and information contained in documents designated as
3 "CONFIDENTIAL" under this Order.

4 **2.3 Counsel (without qualifier):** Outside Counsel of Record and House Counsel (as
5 well as their support staff).

6 **2.4 Designating Party:** a Party or Non-Party that designates information or items that it
7 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

8 **2.5 Disclosure or Discovery Material:** all items or information, regardless of the
9 medium or manner in which it is generated, stored, or maintained (including, among other things,
10 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
11 responses to discovery in this matter.

12 **2.6 Expert:** a person with specialized knowledge or experience in a matter pertinent to
13 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
14 consultant in this action.

15 **2.7 House Counsel:** attorneys who are employees of a party to this action. House
16 Counsel does not include Outside Counsel of Record or any other outside counsel.

17 **2.8 Non-Party:** any natural person, partnership, corporation, association, or other legal
18 entity not named as a Party to this action.

19 **2.9 Outside Counsel of Record:** attorneys who are not employees of a party to this
20 action but are retained to represent or advise a party to this action and have appeared in this action
21 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

22 **2.10 Party:** any party to this action, including all of its officers, directors, employees,
23 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

24 **2.11 Producing Party:** a Party or Non-Party that produces Disclosure or Discovery
25 Material in this action.

26 **2.12 Professional Vendors:** persons or entities that provide litigation support services
27 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
28 storing, or retrieving data in any form or medium) and their employees and subcontractors.

1 **2.13 Protected Material:** any material that is designated as "CONFIDENTIAL" and the
2 information so designated contained therein.

3 **2.14 Receiving Party:** a Party that receives Disclosure or Discovery Material from a
4 Producing Party.

5 **3. SCOPE**

6 The protections conferred by this Stipulation and Order cover not only Protected Material (as
7 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
8 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
9 conversations, or presentations by Parties or their Counsel that might reveal Protected Material. Any
10 use of Protected Material at trial shall be governed by a separate agreement or order.

11 **4. DURATION**

12 Even after final disposition of this litigation, the confidentiality obligations imposed by this
13 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
14 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
15 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
16 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
17 time limits for filing any motions or applications for extension of time pursuant to applicable law.

18 **5. DESIGNATING PROTECTED MATERIAL**

19 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
20 Party or Non-Party that designates information or items for protection under this Order must take
21 care to limit any such designation to only that specific material that qualifies under the appropriate
22 standards. The Designating Party is entitled to designate for protection only those parts of material,
23 documents, items, or oral or written communications that qualify – so that other portions of the
24 material, documents, items, or communications for which protection is not warranted are not swept
25 unjustifiably within the ambit of this Order.

26 If it comes to a Designating Party's attention that information or items that it designated for
27 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
28 that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Any party may designate documents or
2 information as confidential but only after a review of the documents or information by the
3 designating attorney who has, in good faith, determined that the documents or information are
4 legitimately deserving of the designation of confidentiality (in discovery). As a courtesy, the
5 designating party and its/her attorney shall make best efforts to list the documents or information
6 being designated as confidential on a Confidentiality Log. As a courtesy, each party will make best
7 efforts to re-produce the Confidentiality Log to the other party each time another confidentiality
8 designation is made, so that the latest version of that party's Confidentiality Log is a cumulative and
9 current list of all of that party's confidentiality designations. Notwithstanding this agreement to
10 employ best efforts to maintain a Confidentiality Log, listing documents or information on a
11 Confidentiality Log will not, by itself, designate the documents or information as confidential.
12 Rather, a confidential designation under this Order requires complete compliance with the
13 designation requirements set forth in detail herein. Similarly, a party's failure to log a document or
14 other item on a Confidentiality Log will have no force or affect whatsoever, and will not destroy a
15 confidential designation if the party has otherwise complied with the designation requirements set
16 forth in this Order. Except as otherwise provided in this Order or as otherwise stipulated or
17 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be
18 clearly so designated before the material is disclosed or produced.

19 Designation under this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic documents, but
21 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
22 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion
23 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
24 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

25 A Party or Non-Party that makes original documents or materials available for inspection
26 need not designate them for protection until after the inspecting Party has indicated which material it
27 would like copied and produced. During the inspection and before the designation, all of the material
28 made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has

1 identified the documents it wants copied and produced, the Producing Party must determine which
2 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
3 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page
4 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
5 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
6 appropriate markings in the margins).

7 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
8 Designating Party identify on the record, before the close of the deposition, hearing, or other
9 proceeding, all protected testimony.

10 (c) for information produced in some form other than documentary and for any other
11 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
12 containers in which the information or item is stored the legend "CONFIDENTIAL." If only a
13 portion or portions of the information or item warrant protection, the Producing Party, to the extent
14 practicable, shall identify the protected portion(s).

15 **5.3 Inadvertent Failures to Designate.** An inadvertent failure to designate qualified
16 information or items does not, standing alone, waive the Designating Party's right to secure
17 protection under this Order for such material. If a Designating Party, through inadvertence, produces
18 or has previously produced any "CONFIDENTIAL" information without labeling or marking or
19 otherwise designating it as such, the Designating Party may give written notice to the Receiving
20 Party that the document or thing produced is deemed "CONFIDENTIAL" information, and should
21 be treated as such in accordance with that designation under this Order. The Receiving Party must
22 treat such materials and information contained therein as "CONFIDENTIAL" once the Designating
23 Party so notifies the Receiving Party. If the Receiving Party has disclosed the materials before
24 receiving the designation, the Receiving Party must notify the designating party in writing of each
25 such disclosure. Upon correction of a designation, the Receiving Party must make reasonable efforts
26 to assure that the material is treated in accordance with the provisions of this Order.

27 **5.4 Inadvertent Production Of Privileged Or Protected Materials.** The inadvertent
28 production or disclosure of any document or thing otherwise protected by the attorney-client

1 privilege, attorney work product doctrine or any other privilege or protection against disclosure shall
2 not operate as a waiver of any such privilege or protection if, after learning of the inadvertent
3 production or disclosure, the Party who made the inadvertent production or disclosure sends to any
4 Receiving Party a written request for the return or destruction of such documents or things. Upon
5 receiving such a request, the Receiving Party shall immediately take all necessary steps to return or
6 destroy such documents or things, including all copies and electronic copies, and make a written
7 certification to the producing party of such compliance. If the Receiving Party disclosed the
8 inadvertently produced document or thing before being notified by the Producing Party, it
9 must take immediate and reasonable steps to retrieve the inadvertently produced document or thing
10 and must immediately notify the Producing Party of the fact of the disclosure and the identity of the
11 person(s) to whom disclosure was made.

12 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a designation of
14 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
16 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
17 confidentiality designation by electing not to mount a challenge promptly after the original
18 designation is disclosed.

19 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute resolution process
20 by providing written notice of each designation it is challenging and describing the basis for each
21 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
22 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
23 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
24 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
25 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
26 Party must explain the basis for its belief that the confidentiality designation was not proper and
27 must give the Designating Party an opportunity to review the designated material, to reconsider the
28 circumstances, and, if no change in designation is offered, to explain the basis for the chosen

1 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
2 has engaged in this meet and confer process first or establishes that the Designating Party is
3 unwilling to participate in the meet and confer process in a timely manner.

4 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge without court
5 intervention, the Designating Party shall file and serve a motion for a determination by the court as
6 to the confidentiality of the challenged designated materials within 14 days of the parties agreeing
7 that the meet and confer process will not resolve their dispute. Each such motion must be
8 accompanied by a competent declaration affirming that the movant has complied with the meet and
9 confer requirements imposed in the preceding paragraph. In addition, the Challenging Party may file
10 a motion challenging a confidentiality designation at any time if there is good cause for doing so,
11 including a challenge to the designation of a deposition transcript or any portions thereof. Any
12 motion brought pursuant to this provision must be accompanied by a competent declaration
13 affirming that the movant has complied with the meet and confer requirements imposed by the
14 preceding paragraph.

15 The burden of persuasion in any such challenge proceeding shall be on the Designating
16 Party. Unless the Designating Party has waived the confidentiality designation by failing to file a
17 motion to retain confidentiality as described above, all parties shall continue to treat the material in
18 question as CONFIDENTIAL under the Producing Party's designation until the court rules on the
19 challenge.

20 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

21 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is disclosed or
22 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
23 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
24 the categories of persons and under the conditions described in this Order. When the litigation has
25 been terminated, a Receiving Party must comply with the provisions of section 12 below (FINAL
26 DISPOSITION).

27 Protected Material must be stored and maintained by a Receiving Party at a location and in a
28 secure manner that ensures that access is limited to the persons authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
3 disclose any information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
6 information for this litigation;

7 (b) the officers, directors, and employees (including House Counsel) of the
8 Receiving Party to whom disclosure is reasonably necessary;

9 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
10 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement
11 to Be Bound" (Exhibit A);

12 (d) the court and its personnel (pursuant to a motion to seal the CONFIDENTIAL
13 Information or Items or a court order regarding same);

14 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
15 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
16 have been provided a copy of the Stipulated Protective Order;

17 (f) during their depositions, witnesses in the action to whom the Designating and
18 Receiving Parties agree disclosure is reasonably necessary and who have signed the
19 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise ordered by the court.
20 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
21 must be separately bound by the court reporter and may not be disclosed to anyone except as
22 permitted under this Stipulated Protective Order.

23 (g) the author or recipient of a document containing the information or a custodian or
24 other person who otherwise possessed or knew the information.

25 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
26 **LITIGATION**

27 If a Party is served with a subpoena or a court order issued in other litigation that compels
28 disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party

1 | must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

4 (b) promptly notify in writing the party who caused the subpoena or order to issue in
5 the other litigation that some or all of the material covered by the subpoena or order is subject to this
6 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
8 Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

16 | P a g e | 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
18 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
19 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
20 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
21 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
22 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
23 Be Bound" that is attached hereto as Exhibit A.

24 10. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
25 **MATERIAL**

26 Pursuant to Federal Rule of Evidence 502, the inadvertent production or disclosure of any
27 document or thing otherwise protected by the attorney-client privilege or attorney work product
28 immunity shall not operate as a waiver of any such privilege or immunity if, after learning of the

1 inadvertent production or disclosure, the party who made the inadvertent production or disclosure
2 sends to any Receiving Party a written request for the return or destruction of such documents or
3 things. Upon receiving such a request, the Receiving Party shall immediately take all necessary
4 steps to return or destroy such documents or things, including all copies and electronic copies, and
5 make a written certification to the Producing Party of such compliance. If the Receiving Party
6 disclosed the inadvertently produced document or thing before being notified by the Producing
7 Party, it must take reasonable steps to retrieve the inadvertently produced document or thing.

8 Additionally:

9 (a) If the Receiving Party wishes to contest that any such inadvertently
10 produced document or thing is protected by the attorney-client privilege or by attorney work-
11 product immunity, the Receiving Party shall so notify the Producing Party in writing when the
12 document or thing is returned to the Producing Party. Within 10 court days after receiving such
13 notification, the Producing Party shall provide to the Requesting Party a list identifying all such
14 returned documents and things and stating the basis for the claim of privilege or immunity.
15 Within five (5) court days after receiving such a list, and after the parties have attempted to resolve
16 the dispute through a meaningful meet-and-confer, the Receiving Party may file a motion to
17 compel production of such documents and things the protection of which is still disputed. If such
18 a motion is filed, the Producing Party shall have the burden of proving that the documents and
19 things in dispute are protected by the attorney-client privilege or by attorney work-product
20 immunity. If the motion to compel results in a ruling that the documents and things at issue are
21 protected, and not subject to production, the Receiving Party shall immediately take all necessary
22 steps to return or destroy all such documents and things.

23 (b) With respect to documents and things subsequently generated by a
24 Receiving Party, which documents and things contain information derived from such inadvertently
25 produced documents and things, if the Receiving Party does not notify the Producing Party that
26 the Requesting Party disputes the claims of attorney-client privilege or attorney work-product
27 immunity, the Receiving Party shall immediately destroy or redact the derivative documents and
28 things in a manner such that the derivative information cannot in any way be retrieved or

1 reproduced.

2 (c) In no event, however, shall the return or destruction of demanded documents
3 be delayed or refused because of a Receiving Party's objection to the demand or by the filing of a
4 motion to compel. Furthermore, until and unless such motion to compel is granted, the Receiving
5 Party shall neither quote nor reveal any privileged information contained within the documents or
6 things at issue (except through a motion to compel filed under seal), either prior to or following their
7 return, except to the extent such information is reflected in an appropriate privilege log.

8 **11. MISCELLANEOUS**

9 **11.1 Right to Further Relief.** Nothing in this Order abridges the right of any person to
10 seek its modification by the court in the future.

11 **11.2 Right to Assert Other Objections.** By stipulating to the entry of this Protective
12 Order no Party waives any right it otherwise would have to object to disclosing or producing any
13 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
14 Party waives any right to object on any ground to use in evidence of any of the material covered by
15 this Protective Order.

16 **11.3 Filing Protected Material.** Without written permission from the Designating Party
17 or a court order secured after appropriate notice to all interested persons, a Party may not file in the
18 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
19 Material must comply with Local Rule II. 10-5, and any other applicable rules. Protected Material
20 may only be filed under seal pursuant to a court order authorizing the sealing of the specific
21 Protected Material at issue. If a Receiving Party's request to file Protected Material under seal is
22 denied by the court upon a determination that the Protected Material is not properly designated as
23 CONFIDENTIAL, then the Receiving Party may file the information in the public record unless
24 otherwise instructed by the court.

25 **12. FINAL DISPOSITION**

26 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
27 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
28 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,

1 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
2 the Protected Material is returned or destroyed, the Receiving Party must submit a written
3 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
4 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
5 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
6 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
7 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
8 pleadings, motion papers, trial, depositions, and hearing transcripts, legal memoranda,
9 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
10 and expert work product, even if such materials contain Protected Material. Any such archival copies
11 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
12 Section 4 (DURATION).

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 Dated: August 31, 2015

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Dated: August 31, 2015

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Dated: August 31, 2015

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Attorneys for Defendant BANK OF AMERICA, N.A.

IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE

DATED: September 1, 2015

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have been given a copy of the
5 Stipulated Protective Order that was issued by the United States District Court for the District of
6 Nevada on [date] in the case of *Alexis Gurshin v. Bank of America, N.A.*, Case No. 2:15-cv-00323-
7 GMN-VCF. I agree that I am required to comply with this Stipulated Protective Order if I am given
8 access to materials marked "Confidential." I understand that I am not allowed to disclose any
9 information marked "Confidential" to any person or entity except in strict compliance with the
10 provisions of this Order.

11 I further agree to submit to the jurisdiction of the United States District Court for the District
12 of Nevada for the purpose of enforcing the terms of this Stipulated Protective Order, even if such
13 enforcement proceedings occur after termination of this action.

15 Date: _____.

16 | City and State where sworn and signed: _____

18 Printed name:

20 | Signature: